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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 1515

AMITY FABRICS, INC.,

Petitioner,

v.

THE UNITED STATES,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS

REPLY BRIEF

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May 3, 1971

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The respondent does not question the importance of protecting the integrity of the novel legislative device employed by the Congress in the Tariff Classification Act of 1962. Instead, it treats the case as though this issue does not arise, its argument resting entirely upon imprecise statutory references.

Public Law 86-795 not only restricted the scope of the "waterproof cloth" category; it also affirmed the category,

as thus restricted. The Customs Court concluded a detailed review of the legislative history of Public Law 86-795 with the statement:

> "There can be little doubt from the foregoing discussion that what Congress endeavored to accomplish by the bill in question was to prevent the classification of cotton fabrics within the provision for waterproof cloth whenever it was apparent that there was no reason for the waterproofing treatment other than to obtain the benefit of the lower rate of duty. Just as clearly we perceive it to be the intention of the legislature to preserve the status of fabrics designedly rendered waterproof for the *bona fide* use of that protective quality of the cloth." *Amity Fabrics v. United States,* 51 Cust. Ct. 97, 105-06 (1963); appeal dismissed, 51 CCPA (Customs) 129 (1964).

This statute was approved on September 15, 1960; the Tariff Commission did not submit its basic report proposing new tariff schedules until November 15, 1960, although that report was based upon the old tariff schedules as they stood on July 31, 1960. U.S. Tariff Commission, Tariff Classification Study, Vol. 1, page 28. Thus, one can hardly attribute to the Congress, when it voted Public Law 86-795, an intention that this statute should remain in effect only if it happened to be consistent with the as-yet-unrevealed Tariff Commission proposal.

To say that "the Tariff Commission was expressly authorized to make such changes in existing tariffs on imported merchandise as it considered necessary" (Brief in Opposition, pages 8-9), is disingenuous. The only statute which can be so read is the Customs Simplification Act of 1954, 68 Stat. 1136, which authorized the Commission only to *recommend* a new text. The operative statute, the Tariff Classification Act of 1962, directed the Tariff Commission to change its recommended text to incorporate interim Congressional enactments. This the Commission failed to do.

Equally disingenuous is the final argument that the constitutional inhibition on the delegation of Congressional

power was satisfied by the "uncontested fact that such changes had to be placed before the Congress for adoption prior to becoming effective." (Brief in Opposition, page 9.) This contention, even if true, would not help Respondent, since the Commission never submitted its decision to disregard Public Law 86-795 for Congressional review. However, Respondent's own summary of the Act said:

> "the Tariff Commission was to incorporate directly into the new TSUS statutory . . . changes made subsequent to its earlier study, without the need for further Congressional action" (Brief in Opposition p. 6.)

Since Public Law 86-795 was such a statutory change, its incorporation was mandatory. If, as the Court below held, it was discretionary, the Congress provided no standard or rule for the exercise of such discretion. Respondent suggests no such standard or rule.

Respondent nowhere defends the decision below holding that Section 101(b)(4)(A) gave the Commission discretion to omit recent Congressional enactments. That issue, central to this litigation, gives the case the importance which merits the grant of a writ of certiorari.

Respectfully submitted,

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